IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7407 of 2002

With

CIVIL APPLICATION No.8586 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BASHIRKHAN YAKUBKHAN PATHAN

Appearance:

1. Special Civil Application No. 7407 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/07/2003

ORAL JUDGEMENT

#. Rule. Mr.Rathod waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The respondent workman was subjected to a departmental inquiry for not issuing tickets to certain passengers after collecting the fare. The petitioner Corporation, after holding due inquiry, dismissed the concerned employee from service. Ultimately, the respondent workman raised an industrial dispute, which was referred to the Labour Court, Bharuch and the Reference, being Reference (LCB) No.350 of 1997, was decided by the Labour Court. By the impugned award dated 31/12/2001, the Reference of the concerned employee was partly allowed. Since the employee retired on reaching the age of superannuation, he was granted 25% back wages for the intervening period. The petitioner Corporation has challenged the said order by filing this petition.

#. Mr.Raval submitted that since the misconduct in question is already proved in the departmental inquiry, the Labour Court should not have interfered with the punishment order. He submitted that, it is not in dispute that, the concerned workman had collected the fare of Rs.1=25 paise, but, thereafter, he has not issued the tickets to the concerned passengers. He submitted that simply because the amount in question is negligible, the same is no ground for coming to the conclusion that the respondent workman has not committed any misconduct.

#. Considering the order of the Labour Court, in my view, the Labour Court is not right in coming to the conclusion that the respondent workman has not committed the aforesaid misconduct. When there is sufficient evidence available before the Inquiry Officer to reach a finding that misconduct is proved, the Labour Court should not have interfered with the said finding. Learned advocate for the respondent submitted that, this is not a case in which the removal or dismissal order was required to be passed. Mr.Raval submitted that this Court may modify the order appropriately in the facts and circumstances of the case especially when the concerned workman has already retired on reaching the age of superannuation. Mr.Raval submitted that the concerned workman has also earned during the intervening period, and, therefore, no back wages should have been given to the concerned workman. Ultimately, he left the said question to this Court for deciding the same. Considering the facts and circumstances of the case, the

order of the Labour Court is modified to the following extent:-

The concerned workman shall be entitled to the retiral dues as if he has continued in service all throughout till he retired on attaining the age of superannuation. However, for the intervening period, he shall be entitled to Rs.5000/- only. The order relates to granting of 25% back wages is quashed and set aside. Whatever benefit is required to be given to the concerned workman as per this order, may be given within a period of two months from today, if no such retiral dues are paid to the concerned workman so far. This petition is accordingly partly allowed. Rule is made absolute to the extent indicated above with no order as to costs.

In view of the above order, Civil Application No.8586 of 2002 also stands disposed of accordingly.

(P.B.Majmudar,J)

(pathan)